IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8855 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC

Versus

KALUBHAI R PANCHAL

Appearance:

1. Special Civil Application No. 8855 of 1989

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/02/2004

ORAL JUDGEMENT

1. The petitioner - Gujarat State Road Transport Corporation has approached this Court to challenge the

judgment and award of the Labour Court, Rajkot dated 1st July, 1989 in Reference (L.C.R.) No. 810 of 1987.

1.1. It is the say of the petitioner that the respondent, at the relevant time, was working as Conductor in Veraval Depot in Junagadh Division. On 25th September, 1971 while he was discharging his duty in the bus which was being plied between Ahmedabad and Somnath, he had committed serious acts of misconduct for which he was charge-sheeted. According to the petitioner, the acts of misconduct were - (1) he had neither issued ticket to a passenger travelling from Rajkot to Junagadh nor had he collected fare from him, (2) three tickets nos. 16785, 86 and 87 of the value of Rs.5/- which were duly punched and issued from his way-bill were found from his tray, (3) similarly tickets worth Rs.6-50 which were duly punched were found from his tray, (4) a cash of Rs.28-95 in excess was found from him, and (5) he had not obtained permission of the appropriate officer to keep his personal cash of Rs.20/= which was found during the checking and no signature of such officer was obtained in the way-bill. After he was charge-sheeted, the inquiry commenced and on conclusion of the same, the Inquiry Officer found all charges except one proved. So far charge regarding Rs.28-95 paise is concerned, the Inquiry Officer held that it was not proved. The Disciplinary Authority after considering the report submitted by the Inquiry Officer thought it fit to dismiss the Conductor from the service and, therefore, he passed order dated 10th February, 1972 dismissing him from the service.

1.2. It appears that for about 15 years the respondent did not do anything. However, he thereafter raised an industrial dispute and since the conciliation proceedings failed, it was then referred to the Labour Court for adjudication vide order dated 8th April, 1987.

2. Before the Labour Court the respondent submitted his statement of claim and prayed for reinstatement with all incidental benefits. According to him, the charges levelled against him were not true and that he had not committed any act of misconduct which would require the petitioner to dismiss him from the service.

2.1. As against that, the present petitioner resisted the claim by filing reply at Exh. 7 and averred that the reference after lapse of 15 years could not be entertained. The petitioner also averred that all the charges except one had been duly proved and the Disciplinary Authority, taking serious view of the matter, was of the opinion that the punishment of

dismissal from the service was required to be imposed. It further averred that considering the grave nature of the misconduct that was committed by the respondent, the punishment was proper and did not call for any interference by the Labour Court. The petitioner, therefore, averred that the proceedings deserved to be dismissed.

3. Having gone through the material placed before it, the Labour Court found that the inquiry was proper and legal. It, however, came to the conclusion that the charges even if they were held to be proved, merely showed that there was negligence on the part of the respondent, but no inference with regard to misappropriation could be drawn. The Labour Court, therefore, came to the conclusion that looking to the nature of misconduct, the punishment of dismissal from service was very harsh and it deserved to be quashed and set aside. The Labour Court, therefore, quashed and set aside the order of dismissal and directed the petitioner to reinstate the respondent with continuity of service; but in the facts and circumstances, by way of punishment it did not award any back wages. Thus, the petitioner has now approached this Court to challenge the award of the Labour Court quashing the order of dismissal dated 10th February, 1972 and directing it to reinstate the respondent with continuity of service.

4. Mr. Hardik C. Raval, learned advocate appearing for the petitioner has submitted that looking to the nature of the acts of misconduct, which were alleged against him, it is very clear that those acts are very serious and the punishment of dismissal imposed by the Disciplinary Authority was proper. He has further submitted that as a Conductor the respondent was not only required to see that proper tickets were issued and fare was collected from the passengers, but in no circumstances any monetary loss was caused to the petitioner. In the present case, it appears that he had made all the preparations to cause monetary loss by retaining used tickets with a view to reissue them and collect fare for his personal benefit. Lastly, he has submitted that denial of back wages cannot be termed as punishment and, therefore, even if the reinstatement was directed by the Labour Court, some positive order with regard to imposition of punishment was required to be passed.

4.1. It is stated by Mr. Raval that at the time the petition was admitted, interim relief was also granted by this Court by order dated 28th December, 1989 subject to

compliance of section 17-B of the Industrial Disputes Act. He has further stated that with a view to avoid payment of salary to the respondent without allowing him to join the duty was not desirable and, therefore, he has been reinstated and since then he has been discharging duty as Conductor.

4.2. Mr. M.H. Rathod, learned advocate appearing for the respondent has stated that the respondent, while he was working at Lunavada Depot, has retired from service on 30th June, 2003.

5. Considering the fact that the respondent had been reinstated on his original post by the petitioner pursuant to the direction given by the Labour Court in the year 1989, coupled with the fact that now he has retired from the service, it is not worthwhile to interfere with the findings given by the Labour Court and to disturb its final award. The apprehension which the petitioner had, now no longer exists. It is almost 15 years he had joined the service and retired in the month of June 2003, no punishment should now be imposed on him. The petition, therefore, deserves to be dismissed and it is hereby ordered to be dismissed. The interim relief that was granted by this Court stands vacated.

6. It is stated by Mr. Rathod that by virtue of the aforesaid interim relief, the retiral benefits are not released. If that be so, the petitioner is directed to release the same as early as possible.

In view of the aforesaid, rule is discharged with no order as to costs.

[AKSHAY H. MEHTA, J.]

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